

HOUSE BILL 1349

By Sargent

AN ACT to amend Tennessee Code Annotated, Title 65, Chapter 5, relative to gas rate regulation and conservation programs.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 5, is amended by adding the Sections 2 through 8 of this act as a new part.

SECTION 2. This part shall be known and may be cited as the “Natural Gas Conservation and Annual Rate Review Act.”

SECTION 3. It is in the public interest to authorize and encourage natural gas utilities to adopt decoupling mechanisms or annual rate review plans or both decoupling mechanisms and annual rate review plans, together with natural gas conservation plans, that promote the wise use of natural gas and ratemaking efficiencies.

SECTION 4.

As used in this part:

(1) "Allowed distribution revenue" means the authorized average annual weather-normalized non-gas revenue per customer multiplied by the average number of customers served;

(2) "Annual rate review" means the requirement for a utility to file updated schedules and financial information as set forth in this part for the purpose of updating rates that have been established in the utility's last authority-approved general rate case pursuant to § 65-5-101 or § 65-5-103;

(3) "Annual review date" is the annual filing date for a specific utility, as

approved by the authority. The date will be on or before the 15th day of the third month after the end of the annual review period for that utility;

(4) "Annual review period" means the twelve-month period ending on a calendar quarter. The period is proposed by the utility and is subject to the approval of the authority;

(5) "Attrition period" means the twelve-month period reflecting the results of operations for the utility properly adjusted for known and reasonable anticipated changes in the utility's revenues, expenses, and investment through the first twelve months after the projected effective date of the decision in the general rate case;

(6) "Authority" means the Tennessee regulatory authority;

(7) "Authorized average annual weather-normalized non-gas revenue per customer" means the normalized base (non-gas) revenue under rates approved for the applicable attrition period adopted by the authority in the utility's most recent general rate case;

(8) "Conservation and energy efficiency program" means a program approved by the authority that is designed to decrease an average participating customer's annual, weather-normalized consumption or total gas bill, for gas and non-gas elements combined, or avoid costs the customer may otherwise incur;

(9) "Decoupling mechanism" means a rate, tariff design or other mechanism filed as part of a natural gas conservation plan that decouples the recovery of a utility's allowed distribution revenue from the level of consumption of natural gas by its customers, including either one (1) or both of the following:

(A) A mechanism that adjusts actual non-gas distribution revenues per customer to allowed distribution revenue per customer; or

(B) Rate design changes that substantially align the percentage of

fixed charge revenue recovery with the percentage of the utility's fixed costs;

(10) "Fixed costs" means all non-gas costs incurred by a natural gas utility in the provision of service to customers within this state, including the allowed return on common equity approved by the authority;

(11) "Revenue neutral" means a change in a rate, tariff design or mechanism that does not shift annualized allowed distribution revenue between customer rate classes as defined in the utility's approved tariff, and does not increase or decrease the utility's average annual weather-normalized non-gas revenue per customer for any participating rate class.

SECTION 5.

(a) Notwithstanding any law to the contrary, each natural gas utility shall have the option to file a decoupling mechanism or an annual rate review plan or both a decoupling mechanism and an annual rate review plan, together with a natural gas conservation plan, as provided in this part. Any such natural gas conservation plan filed with the authority may include one (1) or more residential, small commercial, or small general service customer classes, but shall not apply to large commercial or large industrial classes of customers. In addition, such plans shall include the following components:

(1) A normalization mechanism that removes the effect of weather from the determination of conservation and energy efficiency results;

(2) Provisions to address the needs of low-income or low-usage residential customers;

(3) One (1) or more conservation and energy efficiency programs;

and

(4) Provisions to ensure that the rates and service to rate classes, as defined in the utility's tariffs, not participating in conservation and energy efficiency programs are not adversely impacted by those programs.

(b) A natural gas conservation plan filed pursuant to subsection (a) shall not require the filing of a general rate case pursuant to § 65-5-101 or § 65-5-103. The authority shall approve or deny, within one hundred eighty days (180) days, a natural gas utility's initial application for any natural gas conservation plan that is filed separate from a general rate case, including a decoupling mechanism if one is filed in conjunction with the natural gas conservation plan. The authority shall approve or deny, within one hundred twenty days (120) days, a natural gas utility's application to amend a previously approved plan that is filed separate from a general rate case, including a decoupling mechanism if one is filed in conjunction with the natural gas conservation plan amendment. The statutory rate case timelines shall apply to the approval of the natural gas conservation plan, including a decoupling mechanism if one is filed in conjunction with the natural gas conservation plan, if the natural gas conservation plan is filed as part of a general rate case pursuant to § 65-5-101 or § 65-5-103.

(c) The authority shall approve any proposed decoupling mechanism filed under this section, whether proposed in an original plan or an amended plan, if it finds that the proposed decoupling mechanism is revenue-neutral and is otherwise consistent with this part.

(d) If the authority denies such a plan or amendment, regardless of whether the plan is filed as part of a general rate case, it shall set forth with specificity the reasons for the denial and the utility shall have the right to re-file, without prejudice,

an amended plan or amendment within sixty (60) days, and the authority shall thereafter have sixty (60) days to approve or deny the amended plan or amendment.

(e) The authority shall allow any natural gas utility that implements a natural gas conservation plan under this part to recover, on a timely basis and through its regulated rates charged to the classes of customers participating in the plan, its entire incremental prudent costs associated with conservation and energy efficiency programs that are designed to encourage the reduction of annualized, weather-normalized natural gas consumption per customer. Once the authority approves the utility's proposed conservation and energy efficiency programs as including prudent costs that are designed to encourage the reduction of annualized, weather-normalized natural gas consumption per customer, the utility shall be entitled to recover all such costs. Ratemaking treatment may include placement of appropriate capital expenditures for technology, research and program costs in rate base, deferral of such costs, or recovery of the utility's technology and program costs through another ratemaking methodology approved by the authority, such as a tracking mechanism. Incremental costs recovered pursuant to this subsection (e) shall be in addition to all other costs that the utility is permitted to recover, shall not be considered an offset to other authority-approved costs of service or revenue requirements, and shall not be included in any computation relative to a performance-based regulation plan revenue sharing mechanism. A conservation plan may rely in part upon, and be complementary to, energy conservation programs funded by federal, state, or other private sources. The portion of the costs of such conservation programs recovered from federal, state, or other private sources shall not be included in the costs eligible for recovery pursuant to this

subsection (e).

(f) The authority shall grant recovery, on an annual basis, of a performance-based incentive for delivering conservation and energy efficiency benefits, which shall be included in the utility's respective purchased gas adjustment mechanism. In structuring this incentive, the authority shall create a reasonable opportunity for a utility to earn up to a fifteen percent (15%) share of the net economic benefits upon meeting target levels of such benefits set forth in a plan approved by the authority. The level of net economic benefits to be used as the basis for such calculation shall be the sum of customer savings less utility costs recovered through subsection (e), measured over the number of years of the payback period, rounded up to the next highest year. The incentives authorized by this subsection (f) shall be in addition to any other revenue requirements or rates established pursuant to § 65-5-101 or § 65-5-103.

SECTION 6.

(a) Notwithstanding any other provision of this part, a utility, in its discretion and at any time, may elect to have the terms of this section implementing an annual rate review, and the terms of Section 5 apply to its rates and charges for gas distribution service, on a prospective basis, by filing a notice of such election with the authority. Upon receipt of notice of such election, the authority shall proceed to make the findings and establish the ongoing procedures required for adjustments in base rates to be made under this section and shall make such findings and establish such procedures within the same timeframe set forth in Section 5 for the approval of a natural gas conservation plan. In carrying out the procedures established by this section with respect to such an election, the authority shall rely upon and utilize the approved rates, charges, revenues,

expenses, capital structure, returns, and other matters established in the public utility's most recent general rate case pursuant to § 65-5-101 or § 65-5-103; provided, however, that the most recent order must have been issued no more than five (5) years prior to the initial election to come under the terms of this section. A utility may combine an election under this section with the filing of a rate case pursuant to § 65-5-101 or § 65-5-103 and the authority shall include the findings required by this part in its rate orders issued in the § 65-5-101 or § 65-5-103 proceedings.

(b) The election by a utility to have the terms of this section apply to its rates and charges for gas distribution service once made shall remain in effect until the next general rate case pursuant to § 65-5-101 or § 65-5-103 for the electing utility at which time the utility may elect to continue the applicability of this section to its rates and charges or elect to opt out of this section. The applicant may withdraw its request to come under the terms of this section at any time before the entry of a final order of the authority on the merits of the proceeding in which the election is made or on a petition for rehearing in the proceeding

(c) In issuing its order pursuant to subsection (a) above, and in addition to the other requirements of §§ 65-5-101 and 65-5-103, if a proceeding pursuant to that section is required, the authority separately shall state the amount of the utility's net plant in service, construction work in progress, accumulated deferred income taxes, inventory, working capital, and other rate base components. It also shall state the utility's depreciation expense, operating and maintenance expense, income taxes, taxes other than income taxes, other components of income for return, and revenues. Additionally, it shall also state the capital structure, cost of debt, overall cost of capital, and allowed return on common equity, unless an ongoing formulaic

method of computing the cost of equity or alternative cost of equity is proposed by the utility and approved by the authority. The figures stated shall be those which the authority has determined to be the appropriate basis on which rates were set in the utility's last authority-approved general rate case.

(d)

(1) Once each year, on the annual review date, the utility shall file with the authority financial schedules including the following:

(A) For the annual rate review period, the utility's actual net plant in service, construction work in progress, accumulated deferred income taxes, inventory, working capital, and other rate base components. The report shall also show the utility's depreciation expense, operating and maintenance expense, income taxes, taxes other than income taxes, other components of income for return, revenues, capital structure, cost of debt, overall cost of capital, and earned return on common equity;

(B) All applicable accounting and pro-forma adjustments historically permitted or required by the authority for the utility in question, or for similarly situated utilities, or authorized by general principles of utility accounting, or authorized by accounting letters or orders issued by the authority;

(C) Itemized pro-forma adjustments to annualize for the twelve-month period any rate adjustments imposed pursuant to this section or other events affecting only part of the period covered by the filing so that the annualization is required to show the effects of those events on the utility's earnings going forward;

(D) Itemized pro-forma or other adjustments required to properly account for atypical, unusual, or nonrecurring events; and

(E) Additional itemized schedules indicating the following revenue calculations:

(i) If the utility's earnings exceed the return on equity specified by the authority under subsection (c), the utility shall calculate the reduction in revenue required to lower its return on equity to the authorized level.

(ii) If the utility's earnings are below the return on equity specified by the authority under subsection (c), the utility shall calculate the additional revenue required to increase its return on equity to the authorized level.

(iii) If in any one year the requested revenue increase resulting from the annual rate review is greater than four percent (4%) of the utility's total revenue, the utility must file a rate case pursuant to § 65-5-103. The authority shall determine the appropriate level of the revenue requirements resulting from exogenous items, including but not limited to: acts of God, war, or terrorism; changes resulting from federal, state or locally imposed requirements such as taxes, fees, safety requirements, or environmental regulations; funding of tax-qualified pension or tax-qualified retirement benefit programs; or any other event beyond the control of the utility that is not to be considered as part of the requested rate increase for the purpose of determining if the filing of a rate

case is required.

(2) The utility also shall provide a schedule that specifies changes in its tariff rates required to achieve any indicated change in revenue.

(3) The proposed rate changes, filed by the utility, shall conform as nearly as is practicable with the revenue allocation principles contained in the natural gas utility's most recent rate order.

(e) The authority shall review the annual rate review filed pursuant to subsection (d) to determine compliance with its terms. Based upon that review, the authority shall order the utility to make the adjustments to tariff rates necessary to achieve the revenue levels indicated in subdivision 6(d)(1)(E) necessary to return the utility's return on equity to the authorized level established in the order issued pursuant to subsection (a) above.

(f) The procedures contained in this section shall apply to the annual rate review filed on the annual review date.

(1) The utility shall file the annual rate filing with the authority and simultaneously shall mail or electronically transmit copies to any interested parties who have requested in writing to receive them.

(2) Interested parties shall be allowed thirty (30) days from the annual review date to file comments in writing to the authority concerning the report.

(3) The authority shall conduct a review of the annual rate filing and specify any changes that the authority determines to be necessary to correct errors in the report or to otherwise bring the report into compliance with this section. The authority's report on the review shall be provided to the utility and made available to all interested parties no

later than sixty (60) days after the annual review date.

(4) Interested parties shall be allowed fifteen (15) days after publication of the authority's review report to file written comments with the authority related to the authority's review report and shall simultaneously mail or electronically transmit copies of these comments to the utility and to all parties to the proceeding.

(5) On or before the date one hundred five (105) days following the annual review date, the authority shall issue an initial order setting forth any changes required in the utility's request to adjust rates under this section, (the "initial order"). In the absence of such an initial order, the gas rate adjustment contained in the utility's filing shall be considered to be granted as filed.

(6) Any gas rate adjustments authorized under the terms of this section shall take effect for all bills rendered on or after the first billing cycle of the month four (4) months following the annual review date.

(g) Within thirty (30) days of the issuance of an initial order pursuant to subdivision (f)(5), or within thirty (30) days of the failure by the authority to issue an order as required pursuant to subdivision (f)(5), any aggrieved party may petition the authority for review of the initial order or failure to issue an order and all interested parties of record shall have a right to be heard at an evidentiary hearing on the matter. The party shall serve a copy of such petition on the utility on the same day and by the same means as it is provided to the authority.

(h) After conducting the hearing required by subsection (g), the authority shall issue a final order (the final order) that:

(1) Sets forth any changes that are required to the rates approved

in the initial order;

(2) Determines the amount of any over-recovery and under-recovery by the utility that resulted from collection of the rates authorized in the initial order as compared to the rates authorized in the final order; and

(3) Establishes a credit to refund the amount of any over-recovery, or a surcharge to collect the amount of any under-recovery that arose during the time that the rates approved in the initial order were collected, and requires the utility to apply the credit or surcharge until such time as the over-recovery or under-recovery is exhausted.

(i) The authority shall issue any final order required under this section no later than one hundred twenty (120) days following the receipt of a petition filed pursuant to subsection (g). The order shall make the corrected rates and the credit or surcharge, if any, effective as of the first billing cycle of month following this-final order.

(j) Sections 65-2-114 and 4-5-322(b)(1)(B)(iii) concerning rehearing and appeal of order from the authority shall apply to the orders issued pursuant to this section.

(k) The review of initial orders pursuant to subsections (g) and (h) is limited to issues related to compliance with the terms of this section. Matters determined in orders issued pursuant to subsection (a) are not subject to review except in full rate cases pursuant to § 65-5-101 or § 65-5-103. Any proceedings pursuant to this section are without prejudice to the right of the authority to issue, or any interested party to request issuance of, a rule to show cause why a full rate case should not be initiated, nor does this section limit the right of a utility to file an application pursuant to § 65-5-103 for an adjustment to its rates and charges.

SECTION 7. Unless the context clearly indicates otherwise, nothing in this part shall impair the authority's authority under § 65-5-101, § 65-5-102, or § 65-5-103; provided, however, that notwithstanding any other law, the authority shall not reduce an authorized return on common equity or other measure of utility profit as a result of the implementation of a decoupling mechanism or an annual rate review plan or both a decoupling mechanism and an annual review plan, together with a natural gas conservation plan, pursuant to this part.

SECTION 8. In addition to the fee required in § 65-4-303, each utility that has an approved decoupling mechanism or an annual rate review plan or both a decoupling mechanism and an annual rate review plan, together with a natural gas conservation plan, shall remit two dollars (\$2.00) per customer annually to the authority on or before April 1. The utility's customer count used to determine the amount to be remitted pursuant to this section shall be based upon the number of such utility's customers at the end of the preceding calendar year.

SECTION 9. This act shall take effect thirty (30) days after this act becomes a law, the public welfare requiring it.